



# 2016-039

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable Daryl Bailey  
Montgomery County District Attorney  
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District Attorneys – Worthless Checks –  
Montgomery County

A district attorney, pursuant to sections 12-17-224 and 13A-9-13.1 of the Code of Alabama, may use the Special Services Division to collect worthless electronic drafts sent to the district attorney by a check-processing company that has reimbursed the merchant for the worthless check.

Dear Mr. Bailey:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can a district attorney, pursuant to sections 12-17-224 and 13A-9-13.1 of the Code of Alabama, use the Special Services Division to collect worthless electronic drafts sent to the district attorney by a check-processing company that has reimbursed the merchant for the worthless check?

FACTS AND ANALYSIS

District attorneys of this state are authorized to establish a worthless check unit pursuant to section 12-17-224 of the Code of Alabama. ALA. CODE § 12-17-224 (2012). In Montgomery County, this program is referred to as the

Special Services Division. This division is tasked with assisting citizens in the collection of worthless checks. Section 12-17-224 sets forth procedures and establishes a scheme of restitution and/or enforcement for these criminal laws.

You informed this Office of a scenario in which a consumer goes into a local store and purchases merchandise with a check. The store processes the check through a check-processing entity that either captures or uses an electronic version of the paper check that was submitted to the store attendant at the register. The paper check is returned to the consumer at the end of the in-store transaction. The check-processing entity, upon approving the check, guarantees the amount of the check and remits an agreed upon amount to the local store.

Recently, the Special Services Division of your office has received several electronic drafts from such a check-processing service. The crux of your inquiry centers on the fact that the instruments in question are electronic checks as opposed to paper checks.

Previously, this Office determined that a check-collection agency was not the appropriate entity to swear out a complaint for the offense of negotiating a worthless check because the entity was not the victim of the crime. Opinion to Honorable Melba S. Dutton, District Court Clerk, Morgan County District Court, dated August 1, 1988, A.G. No. 88-00396. Instead, a check-collection agency merely represented its clients that were victims to the incident.

In this particular matter, however, the entity involved is a check-processing company. As a check-processing entity, this company is currently in possession of the instrument and may be deemed to be a nonholder in possession of the instrument or a holder in due course of the instrument. ALA. CODE §§ 7-3-301 & 7-3-302 (2006). The check-processing entity acquired the rights of the merchant when the merchant transferred the instrument to the check-processing entity. ALA. CODE § 7-3-203 (2006). Thus, the check-processing company becomes the victim in the event the check is dishonored.

Section 12-17-224(a)(2)a. states that, “[a]fter following the requisites of section 13A-9-13.1, any party holding a worthless negotiable instrument may present a ‘complaint’ to the worthless check unit of the special services division of the district attorney’s office.” ALA. CODE § 12-17-224(a)(2)a. (2012) (emphasis added). Section 13A-9-13.1 of the Code of Alabama generally sets forth what constitutes the crime of negotiating a worthless check. Subsection (d) of this provision states that negotiable instruments include electronic drafts. ALA. CODE § 13A-9-13.1(d) (2012). Thus, a distinction should not be made with respect to a paper versus an electronic instrument.

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CONCLUSION

A district attorney, pursuant to sections 12-17-224 and 13A-9-13.1 of the Code of Alabama, may use the Special Services Division to collect worthless electronic drafts sent to the district attorney by a check-processing company that has reimbursed the merchant for the worthless check.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General  
By:

A handwritten signature in cursive script, reading "G. Ward Beeson, III".

G. WARD BEESON, III  
Chief, Opinions Section

LS/MMG  
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